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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Martin R. Pearson  
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Gasoline Tax – Municipalities – Roads,  
Highways and Bridges – Equipment –  
Washington County

The Town of Millry may pay a proportionate share of the cost and maintenance of a backhoe used for resurfacing, restoration, and rehabilitation of roads, bridges, and streets within the municipality from the \$.05 and \$.04 gasoline tax funds.

Dear Mr. Pearson:

This opinion of the Attorney General is issued in response to your request on behalf of the Town of Millry.

QUESTION

May the Town of Millry ("Town") pay a proportionate share of the installment payments and maintenance costs of a backhoe from the \$.04 and \$.05 highway gasoline tax?

FACTS AND ANALYSIS

According to your request, the Town is financing a backhoe that is used primarily by the Town's street and bridge department. At least 60 percent of the usage of the backhoe is for repair and occasional construction of roads within the Town. The Town requests whether it may pay a proportionate share of the

cost of the backhoe from the Town's special road and bridge account, which is funded by the \$.04 and \$.05 gasoline tax revenue.

Section 40-17-325 of the Code of Alabama imposes various taxes on gasoline totaling \$.16 per gallon. ALA. CODE § 40-17-325(a)(1) (2011). Those taxes include "a \$.07 excise tax, a supplemental \$.05 excise tax, and an additional \$.04 excise tax." *Id.* The permissible uses of these taxes are set forth in sections 40-17-362 and 40-17-359 of the Code. ALA. CODE § 40-17-362 (2011); ALA. CODE § 40-17-359 (2011); opinion to Honorable Paul J. Murray, Mayor, City of Satsuma, dated November 15, 2013, A.G. No. 2011-016; opinion to Honorable Ricky Harcrow, President, DeKalb County Commission, dated September 5, 2012, A.G. No. 2012-086.

In pertinent part, section 40-17-362 of the Code states as follows:

Where the use is by a municipality, the use shall be for resurfacing, restoration, and rehabilitation of roads, bridges, and streets within the municipality. The use may also be for bridge replacement within the municipality. From time to time, the funds may also be used to construct new roads and streets within the municipality. These funds shall not be commingled with other funds of the municipality, including any other gasoline tax revenues, and shall be kept and disbursed by the municipality from a special fund only for the purposes hereinabove provided.

ALA. CODE § 40-17-362(b)(3) (2011).

This Office has issued previous opinions dealing with the use of restricted monies to offset the cost associated with use of equipment for permissible projects. For instance, in an opinion to Honorable Jay Ross, this Office concluded that capital improvement funds (restricted to maintenance of county roads) could be used to reimburse other county accounts for the usage of equipment incurred in the maintenance of county roads. Opinion to Honorable Jay M. Ross, Mobile County Attorney, dated March 4, 2014, A.G. No. 2014-045. In *Ross*, this Office emphasized that the initial expenditures should be paid from the general fund of the county, and that at project conclusion, the total cost associated with the permissible use could be reimbursed from the restricted funds. *Id.* at 2. This process requires daily reports and material invoices. *Id.*

The process approved in *Ross* is consistent with the opinions of this Office dealing with various aspects of the gasoline taxes. *See* opinion to Honorable Larry Bennich, Chairman, Morgan County Commission, dated October 23, 2003, A.G. No. 2004-012 (county may use public funds for stream restoration as long as county reimburses restricted accounts, including gasoline

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tax fund, for any expenditures, including reimbursement for the use of equipment purchased with the restricted funds); opinion to Honorable Floyd R. Cook, Judge of Probate, Perry County, dated November 17, 1980, A.G. 81-00065 (county may claim payment from \$.04 gasoline tax fund on a unit basis for allowable expenditures paid from the general fund of the county).

According to your request, the backhoe is used *at least 60 percent* for projects authorized as expenditures from the \$.05 and \$.04 gasoline tax funds. Accordingly, it is the conclusion of this Office that the Town may use the \$.05 and the \$.04 gasoline tax funds for a proportionate or prorated share of the monthly cost and maintenance of the backhoe. We think the better option, however, is to pay for the backhoe and maintenance thereof with unrestricted funds followed by reimbursement from the restricted gasoline tax funds based on invoices and project costs. In either case, as this Office stated in *Cook*, “[t]he key factor here is sufficient documentation that the [restricted] fund is used only for those uses provided by statute.” *Cook* at 2 (emphasis added).

#### CONCLUSION

The Town of Millry may pay a proportionate share of the cost and maintenance of a backhoe used for resurfacing, restoration, and rehabilitation of roads, bridges, and streets within the municipality from the \$.05 and \$.04 gasoline tax funds.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ben Baxley of my staff.

Sincerely,

LUTHER STRANGE

Attorney General

By:



BRENDA F. SMITH

Chief, Opinions Division

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